IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

DOCKET NO. 3:08-CV-109-FDW

DR. JOHN POWDERLY, II and)
CAROLINA BIOONCOLOGY)
INSTITUTE, PLLC,)
)
Plaintiffs)
) ORDER
VS.)
)
BLUE CROSS AND BLUE SHIELD OF)
NORTH CAROLINA,)
)
Defendant.)
)

THIS MATTER came before the Court for hearing on 18 May 2009, and for the reasons stated on the record in open court:

- (1) Plaintiffs' motion for leave to file a third amended complaint is GRANTED, and the antitrust claims (Counts 4-7 of Plaintiff's Second Amended Complaint) are hereby dismissed with prejudice. The Court exercises its discretion to retain supplemental jurisdiction over the remaining state law claims and to disallow Defendants' request for attorneys' fees. However, if Defendant would like to pursue a claim for out-of-pocket costs related to the antitrust claims (other than attorneys' fees, which are specifically disallowed, and applicable Rule 54 costs, which shall be taxed as a matter of course after final entry of judgment), Defendant are granted leave to file a supplemental brief on the issue by 1 June 2009, to which Plaintiff may respond by 15 June 2009.
 - (2) Defendant's motion for summary judgment is GRANTED as to Counts 1 and 3 of

Plaintiff's Third Amended Complaint;

Defendant's motion for summary judgment is DENIED as to Count 2 of (3) Plaintiff's Third Amended Complaint;

(4) Defendant's motion to strike the expert report of Mr. Ferner is HELD IN ABEYANCE pending a *Daubert* hearing to be held at 9:00 a.m. on 16 June 2009. Supplemental briefing may be filed by Defendant by 1 June 2009 and by Plaintiffs by 15 June 2009.

Trial in this matter is hereby CONTINUED from the 13 July 2009 trial term, to be (5) reset at a date and time to be determined.

IT IS SO ORDERED.

Signed: May 18, 2009

Frank D. Whitney

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